THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22976 OF 2005

AND

W.P.M.P.No.29983 of 2005 in W.P.No.22976 of 2005

02.11.2005

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Between:

W.P.No.22976 of 2005

1. Smt. Harbans Kaur, W/o.late Sri S.Iqbal Singh

… Petitioner

AND

1. State of Andhra Pradesh, represented by the Secretary,

Minorities Welfare (Wakf-I) Department, Secretariat, Hyderabad

And others

… Respondents

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… Petitioner

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THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22976 OF 2005

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ORDER:

The writ petition was initially filed challenging the declaration under Section 6 of the Land Acquisition Act, 1894 (for short, the Act) issued by the first respondent. Subsequently, after making elaborate submissions, when this Court pointed out that the corresponding notification under Section 4(1) of the Act is not specifically challenged, the petitioners filed W.P.M.P.No.29983 of 2005 for amending the prayer

in the writ petition. As the same is not opposed, the said miscellaneous application is allowed permitting the petitioners to challenge the notification under Section 4(1) as well as the declaration under Section 6 of the Act.

One Iqbal Singh, the husband of the first petitioner and father of petitioners 2 to 5 occupied open land to an extent of 4,050 square yards with premises bearing No.5-9-96 correlated to T.S.No.14, Block H, Ward No.51 situated at Nampally, Hyderabad. It appears one A.Sudhakara Rao and others filed O.S.No.8 of 1983 for declaration of title and petitioners' father filed suit for seeking declaration of title in respect of 975 square yards and for perpetual injunction. The Court of Additional Chief Judge, City Civil Court, decreed O.S.No.8 of 1983 and dismissed O.S.No.300 of 1982. Appeals were filed before this Court by Iqbal Singh being C.C.C.A.No.1998 of 1986 and C.C.C.A.No.101 of 1986. After death of Iqbal Singh, the petitioners as legal heirs, were brought on record. This Court dismissed the appeals on 04.02.2004 and the petitioners herein were also not successful before the Supreme Court, their special leave petitions having been dismissed on 10.08.2004. Be that as it is, the petitioners claim that they are allegedly in possession of the entire extent of land except 400 square yards, which was used for widening the road in 1978-79. At present, the petitioners are running motor driving school in the name and style of M/s.Hind Motor Driving School at premises No.5-9-96. They claim prescriptive and exclusive title and also deny the title of the Government or any other person.

The first respondent published notification dated 25.05.2005 under Section 4(1) of the Act and published the same in A.P.Gazette dated 30.05.2005 as well as the newspapers proposing to acquire the petitioners' land and land belonging to others for "expansion of Haz House". In exercise of their powers under Section 17(4) of the Act, the first respondent also dispensed with enquiry under Section 5-A of the Act and authorized the Special Deputy Collector, Land Acquisition (General), (hereafter called, the LAO) to perform the functions of LAO and also functions of Collector under Section 5-E of the Act. The corresponding declaration under dated 01.10.2005 under Section 6 of the Act was also published in the A.P.Gazette dated 31.05.2005. Taking up the award enquiry, the second respondent also issued notices to the petitioners under Section 9(1) of the Act.

The petitioners challenged the notifications by filing W.P.No.13818 of 2005. After hearing the learned counsel for contesting respondents, namely, the Government Pleader for Revenue, Standing Counsel for A.P.Wakf Board and Counsel for A.Sudhakara Rao, this Court by order dated 08.07.2005 quashed the declaration under Section 6 of the Act and directed the LAO to initiate enquiry under Section 5-A of the Act to consider the objections of the petitioner and proceed with acquisition proceedings in the light of the decision in the enquiry. Subsequently, the petitioners were given notice to file objections, which they did. The LAO heard the petitioners on 27.08.2005 when the petitioners filed additional objections supplementing the earlier one along with documents. The Government thereafter issued fresh declaration dated 01.10.2005 under Section 6 of the Act and the LAO issued notices under Section 9(3) and 10 of the Act on 10.10.2005 proposing award enquiry on 26.10.2005. The petitioners filed the present writ petition on 24.10.2005.

The learned counsel for the petitioners, Sri Vilas V Afzul Purkar, submits that the present building known as Haz House has enormous unutilized space even after Wakf Board let out the available space to many organizations. Therefore, “expansion of Haz House” is a purpose which is not genuine and the acquisition is colourable exercise of power. Secondly, he would urge that the petitioners have raised various objections and also requested the LAO to call for the remarks of A.P.Wakf Board. The LAO did not call for the remarks of A.P.Wakf Board and did not consider all the objections raised by the petitioners. According to the learned counsel, A.P.Wakf Board wants to use the land to be acquired for the purpose of parking. As at now the petitioners are allowing parking of the vehicles coming to Haz House and they have no objection to continue the same. Therefore, there is no necessity to acquire the land. Lastly, he contends that in spite of the orders of this Court, the LAO conducted enquiry in a routine manner as an empty formality without considering all aspects in the matter. There are no conditions warranting the invocation of Section 17(4) of the Act and the first respondent initiated the acquisition proceedings in an arbitrary manner to deprive the petitioners of the valuable property.

The learned Government Pleader for Revenue (Land Acquisition) and the learned Standing Counsel for A.P.Wakf Board opposed the writ petition. The relevant file from the Office of the second respondent is also produced. A copy of the enquiry report under Section 5-A of the Act and a copy of the letter dated 30.08.2005 addressed by the Chief Executive Officer of A.P.Wakf Board to the LAO also placed before this Court after furnishing these copies to the learned counsel for the petitioners. In opposing the writ petition, the learned counsel submits that all the objections were considered by the LAO before sending a report under Section 5-A of the Act. It is submitted that when the Haz House Committee meets for completing the formalities of selecting pilgrims of Haz, there is a large gathering of people and the present Haz House is not able to accommodate all the pilgrims and those persons who accompany the pilgrims. Therefore, there is urgent need for additional land especially when the Haz season is commencing in a couple of months from now. According to the learned counsel, the present Haz House consists of seven floors in front block and eleven floors in the rear block. Accommodation is provided to the Office of Wakf Board, Minorities Finance Corporation Limited, A.P.Urdu Academy, and District Minorities Welfare Office, Ranga Reddy District. There is no space to accommodate the persons coming the Haz pilgrims due to insufficient accommodation and Wakf Board is facing difficulties. Therefore, it is proposed to acquire the land.

In assailing the notification under Section 4(1) of the Act, it is the submission of the learned counsel for the petitioners that there is no public purpose for acquiring the petitioners’ land. The submission is wholly misconceived. The first respondent proposed to acquire the land for extension of Haz House. By no logic, the same cannot be said to be for a private purpose. The Haz House is the brainchild of A.P.Wakf Board, which is entrusted with the duty of taking care of all wakfs in the State and also protection of wakf properties. It is an apex body also entrusted with the duties under Haz Committee Act, 2002, to make arrangements for pilgrimage of

Muslims for Haz and matters connected thereto. If A.P.Wakf Board takes up a project for welfare of Muslims especially poor Muslims who are on their Haz, the same is certainly in the interest of public and not private interest. Section 3(f) defines the expression "public purpose" and it includes the provision of land for planned development of the land from public funds in pursuance of any scheme or the policy of the Government and provision of any premises or building for locating public office. Haz House under the control of Wakf Board is certainly a public place and acquisition for it certainly falls within the definition of public purpose.

In **Pratibha Nema v State of Madhya Pradesh**, the Supreme Court considered the expression "public purpose" for the purpose of Land Acquisition Act. The following two paragraphs (paras 7 and 8) are relevant and read as under.

> The concept of public purpose (*sans* inclusive definition) was succinctly set out by Batchelor, J. in a vintage decision of the Bombay High Court. In **Hamabai Framjee Petit v. Secy. of State for India**, the Privy Council quoted with approval the following passage from the judgment of Batchelor, J.: (AIR p.21)
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> > "General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."
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> The Privy Council then proceeded to observe that prima facie the Government are good judges to determine the purpose of acquisition i.e. whether the purpose is such that the general interest of the community is served. At the same time, it was aptly said that they are not absolute judges. This decision of the Privy Council and the words of Batchelor, J. were referred to with approval by a Constitution Bench in **Somawanti v. State of Punjab** and various other decisions of this Court.

Therefore, the most appropriate test to be applied when an acquisition is proposed is whether such acquisition is in the interest of the community as opposed to the particular interest of an individual or individuals. Applying the test, this Court holds that the acquisition for extension of Haz House is public purpose within the meaning of Land Acquisition Act. As noticed in the initial round of challenge, the petitioners succeeded in getting the declaration under Section 6(1) of the Act quashed in W.P.No.13810 of 2005 dated 08.07.2005. It is contended that the objections submitted by the petitioners are not considered properly by the LAO before supplementing the report under Section 5-A of the Act. What is the nature of Enquiry to be conducted under Section 5-A and How it is to be conducted? Section 5-A as applicable to State of Andhra Pradesh reads as under.

> **Section 5-A Hearing of objections:-** (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty

days of causing public notice under the said sub-section, object to the acquisition of the land or of any land in the locality as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

The scheme of Section 5-A of the Act shows that within thirty days after publication of notice under Section 4(1) of the Act, any person can file objections to the acquisition in writing to the District Collector. The District Collector shall give objector an opportunity of being heard to the person or his Pleader. Thereafter the Collector has to make such enquiry if he thinks necessary and then make a report to the Government for a decision. What could be the possible objections? A land owner may plead that there is no necessity for acquiring the land, that there is no public purpose, that the land acquisition would result in the left over land, which cannot be used for any purpose and the like or that such a land cannot be acquired by reason of some Government orders issued earlier. It is left to the discretion of the Collector to make such enquiry as is deemed fit. There is no specific method of conducting enquiry. In a given case, keeping in view the nature of the objections, if the Collector/LAO considered all aspects of the matter taking into consideration the totality of the circumstances, it would be proper exercise of the power.

In this case, the petitioners filed their objections on 19.08.2005. The second respondent issued notice and gave an opportunity of personal hearing. First ground of objections by the petitioners is that there is no sufficient space for Haz House and therefore there is no necessity for acquiring the land. Secondly, they contended that A.P.Wakf Board have no funds for payment of compensation and therefore, the land cannot be acquired. Thirdly, the Haz House was constructed without obtaining any permission from MCH. All these aspects were considered by the LAO. Indeed, Chief Executive Officer of A.P.Wakf Board pursuant to a letter dated 20.08.2005 offered his remarks already by letter dated 30.08.2005 clarifying regarding the objections raised by the petitioners. The LAO noticed that A.P.Wakf Board already deposited a sum of Rs.11,09,92,640/- towards eighty per cent of tentative cost, that issue of obtaining permission for Haz House was already settled with Municipal Corporation of Hyderabad and that the proposed land having roads on both sides is very well suitable for Haz House expansion.

It is strenuously contended by the learned counsel for the petitioners large extent of built up space is available and vacant in the present Haz House and therefore no further extension is required. In their letter, A.P.Wakf Board informed the second respondent that there is no place to accommodate persons accompanying the Haz pilgrims due to insufficient accommodation and therefore the land adjacent at Haz House was proposed for acquisition. After considering the remarks of the A.P.Wakf Board and also hearing the petitioners, the second respondent submitted a report on 08.09.2005. The Government considered the same and issued declaration under Section 6 of the Act, which was duly published on 01.10.2005.

Copies of the report under Section 5-A of the Act and the letter of CEO of A.P.Wakf Board are placed before this Court. A perusal of these two would show that the LAO has considered all aspects of the matter duly applying his mind and it cannot be said that the objections of the petitioners were not considered. In these proceedings for judicial review under Article 226 of Constitution of India, it is not possible to examine the report of the LAO under Section 5-A of the Act as an appellate authority. The State in exercise of power of eminent domain acquires the land and the endeavour of the Court should be to see whether such acquisition is in accordance with the procedure under law. If the Court examines the report of the LAO under Section 5-A of the Act as an appellate authority, there would not be any end because there will always be two opinions of on any aspect of the matter.

In the result, this Court does not find any merit in the writ petition and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.11.2005.

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